

Reply Declaration of James Langenfeld

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CARL BLESSING, et al., on Behalf of Themselves and All
Others Similarly Situated,

Plaintiffs,

-against-

SIRIUS XM RADIO INC.,

Defendant.

No. 09-cv-10035 (HB)(RLE)

**REPLY DECLARATION OF JAMES LANGENFELD IN SUPPORT OF
(1) PLAINTIFFS' MOTION FOR FINAL APPROVAL
OF PROPOSED SETTLEMENT AND
(2) CLASS COUNSEL'S APPLICATION FOR AN
AWARD OF ATTORNEYS' FEES AND EXPENSES**

Reply Declaration of James Langenfeld

I, James Langenfeld, declare under penalty of perjury:

1. I have been retained as an expert to Class Counsel, and previously submitted reports on class certification and damages in this matter.¹ I also submitted a Declaration estimating the benefit to subscribers from the proposed Blessing v. Sirius XM Settlement agreement (the “settlement”).² In that Declaration, I also estimated the benefit to subscribers from this litigation, assuming that the reduction in the music royalty fee (“MRF”) from \$1.98 to \$1.40 occurred earlier than planned as a result of this litigation.

2. In this Declaration I briefly respond to criticisms of my previous analyses by Class member John Ireland. Mr. Ireland put forth four basic criticisms of my previous analyses including that:

- I made “far-reaching assumptions” regarding future subscription rates;
- I used only a one year period (April 30, 2010 to April 30, 2011) to predict future subscriber growth;
- I made “sweeping assumptions” including my assumption that 10% of Sirius XM subscribers will choose to renew early to lock in the lower subscription rates during August 1, 2011 to December 31, 2011;
- I improperly attributed the subscriber savings from the reduction in the MRF from \$1.98 to \$1.40 to this litigation.

3. With respect to Mr. Ireland’s first criticism, it is unclear what “far-reaching assumptions” to which he refers. My analysis assumes Sirius XM would have increased its prices on its subscription plans (including both primary radios and multiple radios)

¹ See Expert Report of Dr. James Langenfeld, July 30, 2010, Supplemental Expert Report of Dr. James Langenfeld, October 29, 2010, Damages Report of Dr. James Langenfeld, December 3, 2010, and Expert Rebuttal Report of Dr. James Langenfeld, January 4, 2011.

² Settlement Agreement in Carl Blessing v. Sirius XM Radio Inc., May 13, 2011.

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by \$2 per month once the price restriction imposed by the Federal Communications Commission (“FCC”) expires on July 28, 2011. As I pointed out in my expert reports submitted for this matter, it is my understanding that Sirius XM contemplated such price increases and I reviewed documents produced by Sirius XM as part of this case that corroborate such plans.³

4. With respect to Mr. Ireland’s second criticism, my projections regarding future subscriber growth are reasonable based on my review of historical subscriber growth patterns for Sirius XM as well as confidential information supplied by Sirius XM in this case. Indeed, given the strong subscriber growth numbers recently announced by Sirius XM for the second quarter of 2011, my subscriber growth estimates appear to be conservative.⁴ I also conservatively assume 0% growth between August 2011 and December 31, 2011. In addition, even if I base my growth projections on a longer period of historical growth the results are quite similar. For example, if I go back to just after consummation of the Sirius XM merger (August 31, 2009), then the historical growth rate of primary self-pay Sirius XM subscribers since that time has been 90,269 per month. This figure is close to the 95,275 growth rate that I used in my estimates of subscriber savings from the settlement agreement.

5. Mr. Ireland’s third criticism focuses on my assumption that 10% of self-pay subscribers would renew early during the period August 1, 2011 to December 31, 2011 in order to lock in the lower subscription rates. Based on my review of the evidence in this case, I consider this assumption to be relatively conservative, particularly when one considers the substantial savings to long-term subscribers from locking in at the lower subscription rates. For example, an annual subscriber will save \$22 (\$2 for each of 11 months) in subscription fees and additional savings in reduced MRFs by renewing early, which is a savings of over 15% based on

³For example, see Expert Report of Dr. James Langenfeld, July 30, 2010 at paragraph 64.

⁴ See “Sirius XM Reports Second Quarter 2011 Results,” August 2, 2011 at www.siriusxm.com

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current subscription rates. In addition, estimated subscriber savings from the settlement agreement are substantial even if the 10% renewal assumption is lowered. For example, if my 10% renewal assumption is cut to 5%, then estimated subscriber savings from the settlement agreement still exceed \$180 million.

6. Mr. Ireland's last criticism involves attributing to this litigation the subscriber savings from the reduction in the Sirius XM music royalty fee ("MRF") from \$1.98 per month to \$1.40 per month beginning December 6, 2010 on primary radios. This was based on the assumption that the Blessing v. Sirius XM litigation led Sirius XM to reduce its MRF earlier than its planned date of July 31, 2011. As Mr. Ireland acknowledges, I did not attribute the savings from the early reduction in the MRF as a value of associated with the settlement agreement – only as a potential source of subscriber savings due to this litigation. In addition, as I pointed out in my Declaration, there is substantial evidence in the record of this case to indicate that Sirius XM planned to keep its MRF at \$1.98 through July 31, 2011, but decided to move this date up during the pendency of this litigation.⁵

7. None of Mr. Ireland's criticisms materially affect the opinions expressed in my previous Declaration including my estimate of at least \$200 million in subscriber savings from the proposed settlement agreement in this case. The bulk of these savings come from the 60% of self-pay Sirius XM subscribers who are up for a scheduled renewal payment between August 1, 2011 and December 31, 2011.



James Langenfeld, Ph.D.

August 3, 2011

⁵ Various Sirius XM business documents indicate that Sirius XM planned to keep the MRF at \$1.98 through July 31, 2011 (e.g, see SXM13598140).